

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
 Amendment of Section 73.622(b),)
 Table of allotments,)
 Digital Television broadcast Stations.)
 (Kingston, New York))

MM Docket No. 00-121
 RM-9674

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: Chief, Video Services Division
 Mass Media Bureau (Mail Stop 1800E1)

COMMENTS OF WKOB COMMUNICATIONS, INC.

Introduction

1. WKOB Communications, Inc. ("WKOB") submits these Comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding, DA 00-1485, released July 3, 2000. The NPRM proposes a change in the digital television ("DTV") allotment at Kingston, New York, assigned to Station WRNN-DT, from Channel 21 to Channel 48, pursuant to a request by WRNN-TV Associates Limited Partnership ("WRNN"). WKOB opposes the channel substitution because it will result in the displacement and destruction of co-channel low power television station WKOB-LP, New York, New York, authorized to WKOB; WRNN has not made an adequate overall public interest showing; and the proposal raises concerns that are being explored in MM Docket No. 00-39.

Low Power Television Displacement

2. An important benefit cited by WRNN in its Petition for Rule Making, repeated in the NPRM, is that a channel change will avoid displacement of low power television stations, because operation by WRNN-DT on Channel 21 will displace low power television station

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W21BU, but operation on Channel 48 will not displace any LPTV station. That is not correct. Operation by WRNN-DT on Channel 48 will displace WKOB-LP on Channel 48.^{1/}

3. WKOB is the licensee of Station WKOB-LP, Channel 53, New York, New York. WKOB's Channel 53 operation conflicts with the Channel 53 DTV allotment in Section 73.622(b) at Newark, New Jersey. Accordingly, on June 1, 1998, WKOB filed a displacement application to move to Channel 48.^{2/} More than one party applied for Channel 48, so WKOB's application was placed in Broadcast Auction #25. WKOB was the prevailing bidder at \$1.269 million.^{3/} WKOB's application, File No. BPTTL-JG0601NK, was granted March 28, 2000. Channel 48 is the only possible displacement channel for WKOB in spectrum-crowded New York City. WKOB would never have bid over one million dollars had another channel been available. If WKOB loses Channel 48, it will be forced to go dark.

4. The fact that WKOB's spectrum is authorized on a secondary basis is beside the point. W21BU's spectrum occupancy is equally secondary. The point is that if the *status quo* is to be altered, WRNN bears a heavy burden; and it has not even begun to meet that burden, because it has made no showing with respect to WKOB-LP.

5. For example, WRNN's service gain arguments do not recognize the potential destruction of the LPTV service of WKOB-LP and the number of people who will lose service as a result. WRNN also has not shown that no other channel is available for displacement of

^{1/} See attached statement by Robert W. Fisher, Technical Consultant.

^{2/} WKOB's application was filed after WRNN's initial petition for rule making but before various supplements to WRNN's petition, none of which recognize WKOB-LP's existence.

^{3/} WKOB received a 35% credit when paying its bid.

W21BU.^{4/} WKOB knows that no other channel is available for its station; it certainly studied that question in great detail before putting its money on the table at the auction. Having not made any showing with regard to available options to preserve each of the LPTV stations, WRNN has not justified a change of the existing allotment and destruction of WKOB-LP.

6. In *Advanced Television Systems*, Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), the Commission explicitly warned that it would review all requests for modification of the DTV Table for their impact on low power stations" and that proposed modifications to the DTV Table of Allotments should "avoid impact on such stations wherever possible."^{5/} In this case, given the lack of a conclusive showing that WRNN can provide adequate DTV service on its present channel without destroying WKOB-LP, the Commission must deny the requested channel change.

Public Interest

6. WRNN has also not justified a channel allotment change under the general public interest standard even if LPTV considerations are disregarded.^{6/} As acknowledged by WRNN in its original petition for rule making, the Commission once before rejected a change to Channel 48 because it would create new interference to other stations. Interference to four

^{4/} Perhaps W21BU will be able to move to Channel 48 if WRNN remains on Channel 21.

^{5/} *Advanced Television Systems*, 12 FCC Rcd. at 14671.

^{6/} WKOB does not mean to suggest that LPTV considerations should in fact be disregarded and waives no claim in that regard. Both WKOB and W21BU are minority-owned. Their programming services are important and must not be ignored if there is any way to preserve both of them.

television stations is acknowledged in WRNN's Supplement filed April 30, 1999.^{7/} The principal interference reduction is to WLIW(TV), Long Island, New York.^{8/} However, WRNN does not explain from exactly what geographic area interference would be eliminated and whether alternative public television service is available in that area.^{9/}

7. WRNN also claims a substantial increase in the number of people its station will serve. That number has been reduced from 10,593,146 persons in 1998^{10/} to only 5,931,013 people in 1999.^{11/} The reason for the reduction is that WRNN is now proposing a highly directional antenna pattern to avoid interference to other stations. However, that antenna and the resulting truncation of WRNN-DT's signal raise the issue of how many people will lose service if WRNN-DT changes channels. WRNN should be required to analyze both gains and losses in population, and the number of other services available to both areas, when it compares Channels 21 and 48; and this analysis should be made for both analog and digital audiences, so that the Commission can properly analyze the Section 307(b) implications of the proposal.^{12/}

^{7/} In its initial 1998 petition, WRNN questioned whether WYDN(FM), Channel 48, Worcester, MA, would ever be constructed. WYDN is currently licensed, *see* File No. BLET-19990507KE, granted August 30, 1999, and holds a valid construction permit for facilities changes, File No BPET-20000210AAQ, granted July 31, 2000.

^{8/} *See* WRNN's April 30, 1999, Supplement at p. 2.

^{9/} WLIW is a noncommercial educational station.

^{10/} *See* WRNN's original petition for rule making at par. 14.

^{11/} *See* WRNN's April 30, 1999 Supplement at p. 4.

^{12/} It is particularly important to determine whether WRNN will continue to serve all of its analog service area. *See* the discussion of the Commission's expectation of service replication at par. 9, *infra*.

Docket 00-39 Concerns

8. The main reason why WRNN's proposal will result in such a dramatic population increase is that WRNN is proposing to move its transmitter site 67 km (42 miles) at an azimuth of 169° (close to due south), which essentially moves the station closer to New York City, the nation's largest market.^{13/} In other words, the service improvement appears to be the result more of moving than of changing channels. The area where most of the people reside is unquestionably very well served by other stations, diluting what might otherwise be the Section 307(b) benefits of WRNN-DT's service to a greater population.

9. Furthermore, the move toward New York City implicates concerns expressed by the Commission in the *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rule Making in MM Docket No. 00-39, FCC 00-83, released March 8, 2000. In its Further Supplement filed April 24, 2000, WRNN addresses one aspect of MM Docket No. 00-39, which is whether or not the station will continue to provide at least 57 dBu service to Kingston. But MM Docket No. 00-39 raises another equally important concern, relating to the Section 307(b) implications of stations licensed to "smaller communities near the edge of their market" adjacent to a larger market that have applied to move their transmitters "toward [the] larger market."^{14/} WRNN is in exactly that position. Its proposal raises questions about the Commission's expectation that stations will replicate their NTSC service areas when they convert to DTV.^{15/} WRNN should not be permitted to achieve a

^{13/} The map attached to WRNN's April 30, 1999, Supplement shows interference-free service penetrating New York City.

^{14/} Notice of Proposed Rule Making in MM Docket No. 00-39 at par. 18-19.

^{15/} *Id.* at par. 21-25.


transmitter site change that would be questioned if proposed in a facilities modification application by having its DTV reference point changed in a rule making first. The cost to citizens of the Kingston area must be evaluated if WRNN's signal becomes more competitive in, and focused toward, the heart of the New York City market, along with an analysis of loss areas that would accompany gain areas.

Conclusion

10. This entire rule making is based on a false premise and incomplete information. A change by WRNN to Channel 48, especially moving 42 miles closer to New York City, will displace and destroy an important LPTV station that has nowhere else to go, and it is being proposed in the name of saving an LPTV station that may well have an available alternative way to survive. The Commission is also without sufficient information regarding loss areas if WRNN moves south and confines itself to operating within a highly directional antenna. New interference will be caused to several stations that will not receive interference if WRNN-DT remains on Channel 21. The totality of these circumstances dictates that the *status quo* be maintained. WRNN has certainly not met its burden of showing that a change would advance the overall public interest.

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Respectfully submitted,



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August 21, 2000

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Statement Concerning Technical Analysis of WKOB-LP and Proposed WRNN Facility

Further to the request of WKOB-LP, an analysis of the proposed WRNN-DT channel change to channel 48 has been made with regard to interference caused and received by the granted WKOB-LP displacement construction permit. In this analysis, it is shown that the location, power and channel selected by WRNN would cause severe mutual interference with WKOB-LP which would not be curable by a facilities modification of WKOB-LP. Therefore, this would cause a displacement of WKOB-LP, according to FCC policies and rules. A channel search was performed for a replacement channel for WKOB-LP in New York City and none were found to be available. It is almost certain that the proposed WRNN facility would force WKOB-LP off the air permanently.



08/18/2000

Robert W. Fisher

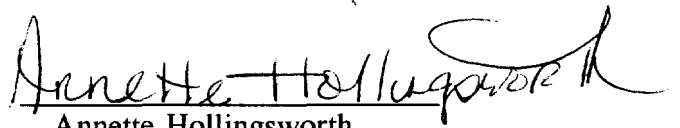
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CERTIFICATE OF SERVICE

I, Annette Hollingsworth, do hereby certify that I have, this 21st day of August, 2000, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Comments of WKOB Communications, Inc." to the following:

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